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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 636

W. E. DAVIS, ET AL.,

Appellants,

vs.

ROY H. BEELER, Attorney General of the State of Tennessee, et al.

APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

STATEMENT OPPOSING JURISDICTION

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MAY IT PLEASE THE COURT:

Conformably to the provisions of paragraph 3, Rule 12 of the Rules of this Court, the appellees submit the following statement opposing jurisdiction in the present case:

I

While the alleged conflict of the challenged statute with the Constitution of the United States was seasonably interposed yet it is well settled by decisions of this Court that if the claimed question of invasion of a federal right be

insubstantial or so often determined by this Court as to leave it without semblance of merit, the appeal will be dismissed.

Sugarman v. *U. S.*, 249 U. S., 182;
Zucht v. *King*, 260 U. S., 174.

II

The construction placed upon a state statute by the court of last resort of such state is binding upon this Court in its consideration of the statute.

Aero-Mayflower Transit Co. v. *Board of Commissioners*, — U. S., — (No. 39 October Term 1947).

III

The effect of the challenged statute is best summarized by the following excerpts from the opinion of the Supreme Court of Tennessee sustaining such:

> "The legislative attempt, in enacting the statute under consideration, was to prevent the practice of naturopathy by ones having only limited qualifications and not possessing what might be termed a general practitioner's or osteopath's certificate," • • •.
>
> • • • • • • •
>
> "The effect of the statutes governing the practice of medicine, the practice of osteopathy, and the present statute is that no person shall practice naturopathy unless he be licensed either as a general practitioner or as an osteopath. It cannot be disputed that the Legislature has the right to require a general practitioner's license for those who desire to practice a limited branch of the healing arts. The present statute may be treated as one imposing additional qualifications upon persons already in the practice of the profession."
>
> • • • • • • •

"The evident intent of the Legislature was to withdraw recognition of naturopathy as a separate branch of the healing arts but allows the use of its methods. Any person now licensed to practice naturopathy may continue the use of such methods by obtaining the additional knowledge required to qualify as a general practitioner or as an osteopath."

IV

It is thoroughly settled by repeated decisions of this Court that a state may impose, upon the practice of medicine, such regulations as it deems proper so long as they bear reasonable relations to the object sought to be attained.

Dent v. *W. Va.*, 129 U. S., 114;
Hawker v. *N. Y.*, 170 U. S. 189;
Reetz v. *Mich.*, 188 U. S., 505;
Collins v. *Texas*, 223 U. S., 288;
Crane v. *Johnson*, 242 U. S. 339;
McNaughton v. *Johnson*, 242 U. S. 344;
Douglas v. *Noble*, 261 U. S. 165;
Graves v. *Minn*, 272 U. S. 425;
Fife v. *La. Board of Medical Examiners*, 274 U. S. 720.

Or as stated differently, there is no right to practice medicine which is not subordinate to the police powers of the states.

Lambert v. *Yellowley*, 272 U. S. 581.

V

This is true although the effect of such regulation is to deprive persons lawfully practicing medicine at the time of the right to further continue such.

Dent v. *W. Va., supra.;*
Hawker v. *N. Y., supra.;*
Reetz v. *Mich., supra.;*
Collins v. *Texas, supra.;*
McNaughton v. *Johnson, supra.*

VI

Nor is the right of the state in this respect impaired because some of the objects affected are innocent.

Queenside Hills Realty Co. v. *Saxal,* 328 U. S. 80.

VII

The right of the states to impose additional qualifications upon those already in the practice of medicine or to require a general practitioner's license for the practice of limited branches of the healing arts is also recognized by the lower federal courts and by the overwhelming weight of authority in state courts.

Butcher v. *Mayberry,* 8 Fed. (2d) 155;
Case Notes 37 A. L. R., 680;
42 A. L. R., 1342;
54 A. L. R., 600.

VIII

The statute in question does not constitute a bill of attainder.

Hawker v. *N. Y., supra.;*
Reetz v. *Mich., supra.*

The discretion to recognize a limited branch of the healing arts must of necessity comprehend the power to withdraw such discretion when the State Legislature shall deem such appropriate for the benefit of its people.

Wherefore and for the above reasons, the appellees respectfully insist that the federal question sought to be raised upon the present appeal is so unsubstantial and so often determined contrary to the contention of appellants

as to warrant this Court in declining jurisdiction of this appeal.

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